

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Caitlin Schwartz	Team: Squad #11	CCRB Case #: 201408874	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 08/23/2014 8:10 PM	Location of Incident: Bushwick Avenue and Hancock Street	Precinct: 83	18 Mo. SOL 2/23/2016	EO SOL 2/23/2016	
Date/Time CV Reported Wed, 08/27/2014 4:16 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 08/27/2014 4:16 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Derek Almeida	25236	946426	083 PCT
2. POF Melissa Joss	09035	947925	083 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Joseph Grimm	3514	946688	083 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Derek Almeida	Force: PO Derek Almeida pointed his gun at § 87(2)(b)	
B.POF Melissa Joss	Abuse: PO Melissa Joss frisked § 87(2)(b)	
C.POF Melissa Joss	Abuse: PO Melissa Joss frisked § 87(2)(b)	
D.POM Derek Almeida	Discourtesy: PO Derek Almeida spoke rudely to § 87(2)(b)	
E.POM Derek Almeida	Abuse: PO Derek Almeida detained § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		

### Case Summary

On August 23, 2014, at 8:08 p.m., Sgt. Joseph Grimm and PO Derek Almeida, of the 83<sup>rd</sup> Precinct, responded to a 911 call regarding an assault involving a knife at § 87(2)(b) in Brooklyn. A man known as § 87(2)(b) reported that his father, § 87(2)(b) stabbed him in the left forearm with a knife, causing a laceration and requiring stitches (encl. 9I-J). While the officers were on the scene, § 87(2)(b) provided them with § 87(2)(b)'s name, address and pedigree information. He also pointed out a black SUV, which he said that § 87(2)(b) was driving. § 87(2)(b) was removed to § 87(2)(b). Sgt. Grimm and PO Almeida stopped the SUV at Bushwick Avenue and Hancock Street. PO Almeida drew his gun and pointed it at the driver's door as he approached it (**Allegation A**). The officers observed that there was blood on the driver's door of the vehicle, inside the vehicle, and on the driver, identified via investigation as § 87(2)(b). All of the occupants of the vehicle—identified via investigation as § 87(2)(b), his wife § 87(2)(b), their daughter § 87(2)(b) [sic] § 87(2)(b), her boyfriend § 87(2)(b) and his mother § 87(2)(b) were removed from the vehicle. PO Melissa Joss, also of the 83<sup>rd</sup> Precinct, responded to the scene. PO Joss allegedly frisked § 87(2)(b) (**Allegation B**) and frisked § 87(2)(b) (**Allegation C**). § 87(2)(b) said that PO Almeida asked him to tell PO Almeida where a knife was. § 87(2)(b) asked, "What knife?" and PO Almeida allegedly responded, "I know you know what the fuck I'm talking about. That's not what the fuck I asked you (**Allegation D**)."

PO Almeida arrested § 87(2)(b). PO Almeida also brought § 87(2)(b) to the stationhouse in handcuffs for questioning and then released him (**Allegation E**).

### Mediation, Civil and Criminal Histories

This case was unsuitable for mediation. As of June 9, 2015, § 87(2)(b) and § 87(2)(b) have not filed notices of claim regarding this incident (encl. 18C).

§ 87(2)(b)  
§ 86(1)

(3)&(4)) § 87(2)(g)

### Civilian and Officer CCRB Histories

- This complaint is § 87(2)(b) and § 87(2)(b) and § 87(2)(b)'s first with the CCRB (encl. 4D-H).
- PO Almeida has been a member of the NYPD for seven years. Five allegations were substantiated against him. In CCRB case number 201115628, vehicle and search of a person were substantiated. The Board recommended charges for both of these allegations, but the NYPD declined to prosecute, and imposed no penalty. In case number 201201695, the Board substantiated a stop allegation and recommended charges, but the NYPD disposition and penalty remain pending. In CCRB case number 201203655, the Board substantiated stop and search allegations against PO Almeida, but made no recommendation. The NYPD took no disciplinary action due to its expired statute of limitations, and consequently imposed no penalty (encl. 4A-B).
- PO Joss has been a member of the NYPD for six years. She has six CCRB allegations against her, involving four cases. None of these allegations was substantiated § 87(2)(g) (encl. 4C).

### Findings and Recommendations

**Allegation A—Abuse of Authority: PO Derek Almeida pointed his gun at § 87(2)(b)**

It is undisputed that as PO Almeida approached the car that § 87(2)(b) was driving, he pointed his gun in the direction of the driver's seat window and § 87(2)(b). PO Almeida and Sgt. Grimm were consistent that the vehicle stop occurred only after the victim of the stabbing, § 87(2)(b) had told them that he was stabbed by his father, whom he identified as § 87(2)(b) and said was currently in a black SUV, which case in close enough proximity that § 87(2)(b) was able to point it out to the officers. When the officers reached the vehicle, there was blood visible on the car and § 87(2)(b).

Given the inherent danger involved in vehicle stops, officers are given broad discretion to display their firearms when they feel that their lives or those of others are endangered. *NYPD v. Gliner*, OATH Index No. 955/00 (Sept. 6, 2000) (encl. 1A-T).

§ 87(2)(g)  
§ 87(2)(g)  
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§ 87(2)(g)  
§ 87(2)(g)

**Allegation B—Abuse of Authority: PO Melissa Joss frisked § 87(2)(b)**

§ 87(2)(b) alleged that PO Joss frisked her chest and waistband (encl. 8A-D). § 87(2)(b) stated that he saw officers frisk § 87(2)(b) on her waist, chest, and legs. However, he also stated that he saw § 87(2)(b) frisked (encl. 7A-E). § 87(2)(b) stated that after the incident § 87(2)(b) told her that she had been frisked by the female officer at the scene. § 87(2)(b) did not allege that she was frisked herself (encl. 6A-D).

PO Joss denied frisking § 87(2)(b) and stated that the woman she frisked was older (encl. 11A-C). The other officers did not recall any females being frisked at the scene (encl. 9Q-R, 10C-D).

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

**Allegation C—Abuse of Authority: PO Melissa Joss frisked § 87(2)(b)**

§ 87(2)(b) who denied being frisked, stated that after the incident, § 87(2)(b) said that she had been frisked by the female officer at the scene (encl. 6A-D). § 87(2)(b) stated that § 87(2)(b) told her after the incident that she had also been frisked (encl. 8A-D). § 87(2)(b) stated that in addition to his daughter, he saw officers frisk § 87(2)(b) on her waist, chest, and legs (encl. 7A-E). § 87(2)(b) was uncooperative with the investigation (encl. 17L). All of the civilians stated that § 87(2)(b) was handcuffed when he was taken from the vehicle, which was corroborated by PO Almeida.

PO Joss stated that when she arrived, everyone that had been in the car was sitting outside, near the bumper of the car, but none of these individuals were handcuffed. There was blood on the car's exterior, and the car was a white SUV. PO Joss was not issued any instructions upon her arrival on the scene. She took no action immediately upon her arrival. There was an officer still at the scene of the assault providing PO Almeida information. PO Joss had information that there had been a knife on scene, so she frisked a female in case she was in possession of the knife in question. Upon being shown photocopies of § 87(2)(b)'s and § 87(2)(b)'s driver's licenses, PO Joss stated that the woman she frisked was in the age range of § 87(2)(b) not § 87(2)(b). PO Joss did not make any observation of this female that led her to believe that she had a

weapon, but she frisked her because she had been present for the incident, during which there had been some sort of physical altercation. PO Joss did not observe any blood on the female she frisked. She did not observe any bulge on this female, who was wearing a baggy hoody down to her waist, making it “unclear what she might have.” PO Joss frisked the older female on the sides of her body, her waistband, her arms, her legs, and the openings of her shoes. PO Joss believed that the woman wore high top sneakers. PO Joss did not detect anything while frisking the woman. She did not search the woman. The knife that was allegedly on the scene had not yet been located when PO Joss frisked the woman (encl. 11A-C).

§ 87(2)(g)

An officer may ask accusatory questions of an individual if founded suspicion of criminality exists. An officer is authorized to frisk an individual only if she suspects that this individual threatens injury to her by virtue of being armed. *People v. DeBour*, 40 N.Y.2d (1976). A frisk for weapons is not justified absent proof of a describable object or conduct which provides a reasonable basis to believe a suspect is armed. *People v. Cooper*, 17 Misc.3d 44 (App. Div. 1<sup>st</sup> Dept. 2007 (encl. 2A-L).

§ 87(2)(g)

**Allegation D—Discourtesy: PO Derek Almeida spoke rudely to** § 87(2)(b)

§ 87(2)(b) stated that when PO Almeida asked him where the knife was, he replied, “What knife?” § 87(2)(b) alleged that PO Almeida then told him, “You know what the fuck I’m talking about. That’s not what the fuck I asked you.” Neither § 87(2)(b) nor § 87(2)(b) repeated this allegation, but it’s unclear if they would have heard this conversation. PO Almeida denied using any profanity during the incident, or hearing any other officer do so. Neither Sgt. Grimm nor PO Joss recalled any officer using any profanity. § 87(2)(g)

**Allegation E—Abuse of Authority: PO Derek Almeida detained** § 87(2)(b)

It is not in dispute that § 87(2)(b) was removed from the scene in handcuffs and brought back to the station house, where he was eventually released without being charged. The Command Log entries for this incident list § 87(2)(b)'s age as § 87(2)(b) and § 87(2)(b)'s as § 87(2)(b) (encl. 14A).

As discussed above, the complaint report pursuant to which § 87(2)(b) was arrested stated that he stabbed § 87(2)(b). PO Almeida and Sgt. Grimm testified that when they responded to the scene, § 87(2)(b) told them that he had been stabbed by his own father, § 87(2)(b), whose address, pedigree information and actual location he also provided. This information led PO Almeida and Sgt. Grimm to § 87(2)(b)'s SUV, § 87(2)(g).

PO Almeida also placed § 87(2)(b) under arrest, although this arrest was later voided and sealed, and no charges were noted in the Command Log when he was logged in, although charges were noted for § 87(2)(b) (encl. 14A-B). PO Almeida testified that he made the decision to bring § 87(2)(b) into custody for questioning to determine whether he had been involved in the incident. PO Almeida further testified that once § 87(2)(b) and § 87(2)(b) were in police custody, he went to § 87(2)(b) and asked § 87(2)(b) whether § 87(2)(b) was involved in the incident. § 87(2)(b) denied that § 87(2)(b) was, and PO Almeida released § 87(2)(b) from the station house. Sgt. Grimm testified that § 87(2)(b) was detained for questioning, since it was unclear whether he had been involved in the incident, and later released.

An officer may ask accusatory questions of an individual if founded suspicion of criminality exists. *People v. DeBour*, 40 N.Y.2d (1976) (encl. 2A-K). The United States Supreme Court has upheld that detention for custodial interrogation is an intrusion on Fourth Amendment rights akin to illegal arrest. When there is no probable cause for an individual's arrest, the involuntary transportation of said individual to the police station for interrogation constitutes an unreasonable seizure per the Fourth Amendment. *Dunaway v. New York*, 442 U.S. 200, (1979) (encl. 3A-N).

§ 87(2)(g)

[REDACTED]

§ 87(4-b) § 87(2)(g)

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§ 87(4-b) § 87(2)(g)

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Team: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date